

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CIVIL REVISION APPLICATION No. 1714 of 1995****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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AMRATLAL SHANKARLAL BHAVSAR, MANAGER OF HUF - Applicant(s)

Versus

DAHIBEN WIDOW OF BABULAL HARGOVANDAS PATEL & 1 - Opponent(s)

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Appearance :

MR PRANAV G DESAI for Petitioner No(s).: 1.

MR BD KARIA for Respondent No(s).: 1 - 1,2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG**Date : 17/08/2005****ORAL JUDGMENT**

1.The dissatisfied landlord is before this Court against the judgment and decree dated 27th April, 1995, passed in Regular Civil Appeal No. 123 of 1993 by the learned

Extra Assistant Judge, Mehsana, whereby the learned appellate court had set aside the judgment and decree passed by the learned Civil Judge (Junior Division), Kheralu in Regular Civil Suit No. 7 of 1991 on 4.10.93.

2. The appellant-plaintiff came to the court with the complaint that the tenant was in arrears of rent and he had sublet the premises to the defendant no. 2 and as such, he was liable to be evicted. The tenant appeared before the court and submitted that the defendant no. 2 was not a sub-tenant, but was son of his wife and he was residing with him. His case was that he had married with the mother of the defendant no.2 after the death of her husband and as such, the defendant no. 2 was his son. It was also submitted by the tenant that much before the issuance of the demand notice, money orders were sent to the landlord, but the landlord refused to accept the rent and by this act of the landlord, he was trying to create a ground in his own favour.

3. The trial court, after framing the issues, gave an opportunity to the parties to lead evidence. After hearing the parties, it recorded a finding that the premises were not sublet, however, it agreed with the landlord that the tenant was in arrears of rent. Being aggrieved by the said findings and judgment, the

tenant filed an appeal under Section 29 of the Bombay Rents, Hotels & Lodging Houses Rates Control Act, 1947. The appellate court observed that the rent was deposited during pendency of the suit and as the suit was transferred from the old court to Vadnagar Court and as the Vadnagar Court was not accepting deposits in the Nazarat, the tenant having deposited the rent subsequently, had complied with the requirement of law and he could not be deemed to be in arrears of rent. It accordingly set aside the judgment and decree. The landlord now is before this Court.

4. Learned counsel for the appellant, placing reliance upon the judgment of the Supreme Court in the matter of **[Smt.]Sulochana Damodar Vs. [Smt.] Ratnaprabha V. Tople, reported in 1993 (1) G.L.H.512**, submitted that the landlord had come to the court with the case that the tenant was in arrears of rent and if the tenant wanted to take benefit of Sec.13(3)(b), then, the tenant was required to deposit the arrears due on the first date of hearing. If the tenant does not deposit the rent on the first date of hearing or within the period extended by the court, he is liable to be evicted. It is submitted that the tenant did not make any application seeking extension of time, the appellate

Court could not hold that the deposits made during pendency of the suit would enure to the benefit of the tenant. He submitted that the tenant deserves to be evicted.

5. Learned counsel for the respondent, placing his strong reliance upon the judgment of this Court in the matter of **Somabhai Kalidas Patel Vs. Bachubhai Sakalchand Modi in Civil Revision Application No. 123/80, decided on 12.3.86, reported as Short Note in 1986 G.L.H. (UJ) 22**, submits that the deposit of the amount of rent even before the appellate judgment would enure to the benefit of the tenant and the tenant is not liable to be evicted.
6. True it is that in the judgment of Somabhai (supra), this Court has observed that the rent was deposited before the appellate judgment was delivered and as such, the deposit would enure to the benefit of the tenant but the said judgment would lose its efficacy in view of the judgment of the Supreme Court in the matter of [Smt.] Sulochana Damodar. In the said matter, the Supreme Court, while considering the effect of Section 12(3)(b) of the Bombay Rent Act, which stood before the amendment by Maharashtra Amendment Act No. 18 of 1987, observed that it would be incumbent upon the tenant to

make deposits on the first day of hearing and if he does not make such deposits, then, it would be open for him to make an application, seeking extension of time and in case, he makes deposit within the extended period, then, no order or decree for eviction shall be made. The Supreme Court pointedly observed that a reading of clause [b] of the Maharashtra Act, which is virtually *pari materia* with the present Act, clearly shows that for obtaining the benefit provided by it, the tenant has to pay not only the arrears of rent and permissible increases, but must also continue to pay or tender in court regularly such rent and permitted increases till the suit is finally decided. The Supreme Court also observed that the tenant would be obliged to make an application seeking extension of time. In the present matter, the tenant did appear in the court, but did not make the deposits on the first day of hearing.

7. It was contended by the learned counsel for the respondents that the suit was transferred from the original court to Vadnagar court and as the deposits were not permissible nor the deposits were being accepted by the appellate court, it was not possible for the tenants to make deposits. The argument is

misconceived. It is to be seen that suit was transferred to Vadnagar court much after appearance of the defendant. It is also to be seen that if the defendant wanted to take benefit or was to claim shelter under second part of Section 12 (3)(b) of the Act, then, he was obliged to make an application to the court seeking extension of time. Simple permission of the court to deposit rent would not amount to extension of time. Deposits, if are to be made, then it is clerical/ministerial matter, while extension of time is a judicial function and such order is to be passed by the court concerned after application of mind. In the present case, the tenant did not make any application to the trial court for extension of time. If an application for extension of time is not made, then, protection available to the tenant under Section 12 (3)(b) of the Act would be withdrawn. For seeking benefits under Section 12(3)(b), the tenant has to make deposit of the arrears on the first date of hearing of the suit or in the alternative on or before such other date as the court may fix. Undisputedly, the tenant did not make deposits on the first day of hearing, nor did he seek extension of time and as such, protection available to him in the later part of Section 12(3)(b)

would not be available to him. The appellate court was unjustified in interfering in the matter. The trial court was absolutely justified in granting decree in favour of the landlord. The revision, for the reasons aforesaid, is allowed. Judgment of the appellate court is set aside and that of the trial court is restored. Rule is made absolute.

[R.S. GARG, J.]

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